

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JEREMY VILLANUEVA,

Plaintiff,

v.

PROTERRA INC., et al.,

Defendants.

Case No. 23-cv-03519-BLF

**ORDER APPOINTING CYRESS JAM
AS LEAD PLAINTIFF AND LEVI &
KORSINSKY AS LEAD COUNSEL**

[Re: ECF No. 17, 21, 24, 25, 32, 36]

Before the Court are six motions for appointment of lead plaintiff and approval of selection of lead counsel. ECF Nos. 17, 21, 24, 25, 32, 36. For the reasons stated below, the Court GRANTS Plaintiff Cyress Jam's motion at ECF No. 21 and DENIES the remaining motions at ECF Nos. 16, 24, 25, 32, and 36.

I. BACKGROUND

On July 14, 2023, Jeremy Villanueva filed this putative securities class action lawsuit against Defendants Proterra Inc., Gareth T. Joyce, and Karina Franco Padilla (collectively "Defendants"). *See* ECF No. 1 ("Compl."). Proterra designs and manufactures zero-emission electric transit vehicles and electric vehicle solutions for commercial applications. *Id.* ¶ 2. The complaint alleges that between August 2, 2022 to March 15, 2023, Defendants issued false and/or materially misleading statements and omissions about Proterra's balance sheet and gross margins. *Id.* ¶¶ 25–37. The complaint alleges that when Proterra released its quarterly earnings for the fourth quarter of 2022, which reflected a net loss of \$81 million and a gross loss of \$20.3 million, the company's stock price fell from \$2.51 to \$1.16. *Id.* ¶¶ 35–37. As a result of Defendants' actions, the complaint alleges that "Plaintiff and the other Class members suffered economic loss, *i.e.*, damages, under the federal securities laws." *Id.* ¶ 42. As a result, Villaneuva filed this

lawsuit for violations of the Securities Exchange Act of 1934 on behalf of all persons who purchased Proterra securities during the Class Period. *Id.* ¶ 51.

About six weeks after the complaint in this case was filed, another securities fraud suit was filed against Proterra alleging substantially the same facts and legal theory. *See Tirado v. Proterra, Inc.*, No. 5:23-cv-04528-BLF. On October 23, 2023, the Court ordered that *Tirado* is related to this case. ECF No. 56. Jam’s motion to appoint lead plaintiff and lead counsel has adopted the broader Class Period identified in *Tirado*: August 11, 2021 to August 7, 2023. *See* ECF No. 21 at 6 n.1.

On the date that the complaint in this case was filed, July 14, 2023, a Private Securities Litigation Reform Act of 1995 (“PSLRA”) early notice was issued advising potential class members of the claims alleged in the action and the 60-day deadline for class members to move to be appointed as lead plaintiff. *See* ECF No. 21-4 at 2–3. On September 12, 2023, six plaintiffs filed a motion for appointment as lead plaintiff and approval of selection of counsel: (1) Michael and Linda Wade, ECF No. 17; (2) Cyress Jam, ECF No. 21; (3) Ernesto Hachey, ECF No. 24; (4) Melih Karamikoglu and Ilker Karakaya, ECF No. 25; (5) Harold Weber, ECF No. 32; and (6) Luong Du, ECF No. 36. Between September 20 and September 26, 2023, all plaintiff movants with the exception of Jam withdrew their motions or filed statements of non-opposition to the Court appointing the lead plaintiff movant with the largest financial interest. *See* ECF No. 42 (Du); ECF No. 43 (Hachey); ECF No. 44 (the Wades); ECF No. 45 (Weber); ECF No. 46 (Karamikoglu and Karakaya).

II. LEGAL STANDARD

A. Lead Plaintiff

The PSLRA governs the procedure for selection of lead plaintiff in all private class actions under the Exchange Act. 15 U.S.C. § 78u-4(a)(3). Pursuant to the PSLRA, the court shall appoint as lead plaintiff “the member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the interests of class members,” also referred to as the “most adequate plaintiff.” *Id.* § 78u-4(a)(3)(B)(i).

The PSLRA “provides a simple three-step process for identifying the lead plaintiff.” *In re*

Cavanaugh, 306 F.3d 726, 729 (9th Cir. 2002). First, the pendency of the action, the claims made, and the purported class period must be publicized in a “widely circulated national business-oriented publication or wire service.” *Id.* (citing 15 U.S.C. § 78u-4(a)(3)(A)(i)). This notice must be published within 20 days of the filing of the complaint. *See* 15 U.S.C. § 78u-4(a)(3)(A)(i). It must also alert members of the purported class that they have 60 days to move for appointment as lead plaintiff. *See id.* § 78u-4(a)(3)(A)(i)(II).

Second, the court must identify the presumptive lead plaintiff. To do so, the court “must compare the financial stakes of the various plaintiffs and determine which one has the most to gain from the lawsuit.” *Cavanaugh*, 306 F.3d at 730. In calculating financial stakes, “the court may select accounting methods that are both rational and consistently applied.” *Id.* at 730 n.4. The court must then determine whether the individual with the largest financial stake, “based on the information he has provided in his pleadings and declarations,” satisfies the requirements of Rule 23(a), “in particular those of ‘typicality’ and ‘adequacy.’” *Id.* at 730. If the plaintiff with the largest financial interest satisfies these requirements, he or she becomes the “presumptively most adequate plaintiff.” *Id.*; *see also* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I). Finally, the other plaintiffs must have “an opportunity to rebut the presumptive lead plaintiff’s showing that [he or she] satisfies Rule 23’s typicality and adequacy requirements.” *Cavanaugh*, 306 F.3d at 730. Unless a member of the purported plaintiff class provides proof that the presumptive plaintiff “(aa) will not fairly and adequately protect the interests of the class; or (bb) is subject to unique defenses that render such plaintiff incapable of adequately representing the class,” the court must appoint the presumptively most adequate plaintiff as lead plaintiff. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II); *see also Cavanaugh*, 306 F.3d at 732.

B. Lead Counsel

Under the PSLRA, the lead plaintiff has the right, subject to court approval, to “select and retain counsel to represent the class.” 15 U.S.C. § 78u-4(a)(3)(B)(v). “[T]he district court should not reject a lead plaintiff’s proposed counsel merely because it would have chosen differently.” *Cohen v. U.S. Dist. Court*, 586 F.3d 703, 711 (9th Cir. 2009) (citation omitted). “[I]f the lead plaintiff has made a reasonable choice of counsel, the district court should generally defer to that

choice.” *Id.* at 712 (citations omitted).

III. DISCUSSION

A. Request to Consolidate Cases

All six of the lead plaintiff movants also moved for the Court to consolidate this action with *Tirado*. The PSLRA provides that “[i]f more than one action on behalf of a class asserting substantially the same claim or claims arising under this subchapter has been filed,” the Court shall not make the determination of the most adequate plaintiff until “after the decision on the motion to consolidate is rendered.” 15 U.S.C. § 77z-1(a)(3)(B)(ii). “As soon as practicable after [the consolidation] decision is rendered, the court shall appoint the most adequate plaintiff as lead plaintiff for the consolidated actions.” *Id.*

“If actions before the court involve a common question of law or fact, the court may . . . consolidate the actions.” Fed. R. Civ. P. 42(a)(2). District courts have “broad discretion under [Rule 42(a)] to consolidate cases pending in the same district.” *Investors Research Co. v. U.S. Dist. Court for Cent. Dist. of California*, 877 F.2d 777, 777 (9th Cir. 1989). “In determining whether or not to consolidate cases, the Court should weigh the interest of judicial convenience against the potential for delay, confusion and prejudice.” *Bodri v. Gopro, Inc.*, 2016 WL 1718217, at *1 (N.D. Cal. Apr. 28, 2016) (quotation marks omitted) (quoting *Zhu v. UCBH Holdings, Inc.*, 682 F.Supp.2d 1049, 1052 (N.D. Cal. 2010)).

This case and *Tirado*, which are both pending before the Court, present similar factual and legal issues, as they each involve the same subject matter and are based on the same alleged wrongful course of conduct. *Compare* Compl., with *Tirado* ECF No. 1 (“*Tirado* Compl.”). Both cases bring claims under the Securities Exchange Act of 1934 and SEC Rule 10b-5 against Proterra, Gareth Joyce, and Karina Franco Padilla. In addition, *Tirado* raises these claims against Amy E. Ard. *Tirado* Compl. ¶ 15. Although *Tirado* defines the class using a broader time period, both cases arise from the same set of facts and circumstances (namely, public statements about Proterra’s balance sheet and gross margins), involve the same subject matter, and the same class (persons who purchased Proterra stock during the class period). As such, the same discovery and similar class certification issues will be relevant to both actions. Accordingly, the Court finds that

Tirado is related to this action and CONSOLIDATES this case with *Tirado*.

B. Procedural Requirements

Pursuant to the PSLRA, Levi & Korsinsky published notice of the pending action on July 14, 2023, the same date the complaint was filed. *See* 15 U.S.C. § 78u-4(a)(3)(A)(i); ECF No. 21-4 at 2–3. The notice announced the pendency of this action, listed the claims, specified the class period, and advised putative class members that they had 60 days from the date of the notice to file a motion to seek appointment as lead plaintiff in the lawsuit. *Id.* Thus, the notice complied with the PSLRA’s requirements. *See* 15 U.S.C. § 78u-4(a)(3)(A). All six plaintiffs filed motions for appointment as lead plaintiff on September 12, 2023, the last day within the 60-day deadline. All plaintiffs have met the statutory notice requirements.

C. Greatest Financial Loss

In considering which movant for lead plaintiff appointment in a securities class action has the greatest financial interest, courts generally consider a four-factor test: “(1) the number of shares purchased during the class period; (2) the number of net shares purchased during the class period; (3) the total net funds expended during the class period; and (4) the approximate losses suffered.” *Perlmutter v. Intuitive Surgical, Inc.*, No. 10-CV-03451-LHK, 2011 WL 566814, at *7 (N.D. Cal. Feb. 15, 2011) (citations omitted). Courts place the most emphasis on the final factor—the approximate losses suffered. *See id.*

Jam has submitted a “loss chart” setting forth calculations of his alleged losses, totaling approximately \$1,093,258.16 under a LIFO and *Dura* LIFO analysis. ECF No. 21-3 at 2. Because Jam’s motion is unopposed, Jam is necessarily the prospective lead plaintiff with the greatest financial interest in the litigation. *See* ECF No. 42 (Du Notice of Non-Opposition); ECF No. 43 (Hachey Withdrawal of Motion); ECF No. 44 (the Wades Notice of Non-Opposition); ECF No. 45 (Weber Notice of Non-Opposition); ECF No. 46 (Karamikoglu and Karakaya Notice of Non-Opposition); *see also City of Dearborn Heights Act 345 Police & Fire Ret. Sys. v. Align Tech., Inc.*, No. 12-CV-06039-LHK, 2013 WL 2368059, at *3 (N.D. Cal. May 29, 2013) (“Without access to financial information from other parties, the Court is constrained to conclude that the [proposed plaintiff’s] alleged loss best qualifies it to serve as lead plaintiff.”) (quoting

Bassin v. Decode Genetics, Inc., 230 F.R.D. 313, 316 (S.D.N.Y. 2005))).

D. Rule 23 Requirements

Upon determining the movant with the largest financial interest, the court “must then focus its attention on *that* plaintiff and determine . . . whether he [or she] satisfies the requirements of Rule 23(a).” *Cavanaugh*, 306 F.3d at 730; *see also* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(cc). Rule 23(a) requires satisfaction of four factors to serve as a class representative:

(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). The typicality and adequacy requirements of Rule 23 are the main focus of this determination. *See Cavanaugh*, 306 F.3d at 730. Examination of the remaining requirements is deferred until the lead plaintiff moves for class certification. The movant with the largest financial interest “need only make a prima facie showing [of its] typicality and adequacy.” *Veal v. LendingClub Corp.*, No. 18-cv-02599-BLF, 2018 WL 5879645, at *4 (N.D. Cal. Nov. 7, 2018) (citing *Cavanaugh*, 306 F.3d at 731).

In determining whether typicality is satisfied, the Court inquires “whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.” *In re Twitter Inc. Sec. Litig.*, 326 F.R.D. 619, 629 (N.D. Cal. 2018) (quoting *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992)). In this case, like all other members of the purported class, Jam purchased Proterra stocks during the Class Period, when Proterra’s stock prices were allegedly artificially inflated by Defendants’ misrepresentations and/or omissions, and Jam allegedly suffered damages when those misrepresentations and/or omissions came to light. *See* ECF No. 21 at 8. Jam’s claims thus appear to be typical, if not identical, to the claims of other members of the putative class.

In determining whether the lead plaintiff will adequately represent the class, the Court must resolve two questions: “(1) do the named plaintiffs and their counsel have any conflicts of

1 interest with other class members and (2) will the named plaintiffs and their counsel prosecute the
 2 action vigorously on behalf of the class?” *In re Twitter*, 326 F.R.D. at 626 (quoting *Ellis v. Costco*
 3 *Wholesale Corp.*, 657 F.3d 970, 985 (9th Cir. 2011)). In this case, there are no indications of
 4 conflicts of interest between Jam and other class members. The Court is also satisfied that Jam
 5 will prosecute this action vigorously. Jam is motivated to prosecute the case due to his large
 6 financial interest. *See* ECF No. 21-3 at 2; ECF No. 21 at 9. Jam also an experienced investor in
 7 securities. He is the sole owner of Star Alliance, LLC, an investment vehicle used for his personal
 8 investments. ECF No. 21-5 ¶ 2. Jam has also invested in securities for twenty-four years. *Id.* ¶ 3.
 9 Finally, Jam has experience hiring and overseeing attorneys because he has had attorneys on
 10 retainer for personal and business matters for the last thirty years. *Id.* The Court also notes that
 11 Jam has been diligent in seeking appointment as lead plaintiff. Therefore, the Court concludes
 12 that Jam will adequately represent the class.

13 The Court must then “give other plaintiffs an opportunity to rebut the presumptive lead
 14 plaintiff’s showing that it satisfies Rule 23’s typicality and adequacy requirements.” *Cavanaugh*,
 15 306 F.3d at 730 (citing 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II)). The presumption of adequacy “may
 16 be rebutted only upon proof . . . that the presumptively most adequate plaintiff” does not satisfy
 17 the adequacy or typicality requirements of Rule 23. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II);
 18 *Cavanaugh*, 306 F.3d at 729 n.2. Other plaintiffs have been afforded an opportunity to rebut
 19 Jam’s showing that he as the presumptive lead plaintiff satisfies Rule 23’s typicality and adequacy
 20 requirements. However, Jam’s motion is unopposed, and no member of the purported plaintiff
 21 class has provided proof that Jam “will not fairly and adequately protect the interests of the class”
 22 or that Jam “is subject to unique defenses that render [him] incapable of adequately representing
 23 the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II).

24 Accordingly, the Court APPOINTS Jam to serve as Lead Plaintiff.

25 **E. Lead Counsel**

26 No parties have objected to Jam’s selection of Levi & Korsinsky LLP as counsel. The
 27 Court has reviewed the firm’s resume, ECF No. 21-6, and is satisfied that Jam has made a
 28 reasonable choice of counsel. *See also* ECF No. 21 at 10. Accordingly, the Court APPROVES

Jam's selection of Levi & Korsinsky as Lead Counsel.

IV. ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that:

1. *Villanueva v. Proterra Inc.*, No. 23-3519, and *Tirado v. Proterra Inc.*, No. 23-4528, are CONSOLIDATED. All future filings in the consolidated action will be filed in *Villanueva*.

The Court ORDERS that the Clerk of the Court administratively close *Tirado*.

2. Cyress Jam is APPOINTED as Lead Plaintiff;

3. Levi & Korsinsky LLP is APPOINTED as Lead Counsel; and

4. All other Motions to Appoint Lead Plaintiff and Lead Counsel are DENIED.

5. Lead Plaintiff shall advise the Court whether he intends to file a consolidated amended complaint.

Dated: October 23, 2023


BETH LABSON FREEMAN
United States District Judge